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In re Application of	:	
FISCHER, Reiner, et al.	:	
Application No.: 10/578,900	:	DECISION ON
PCT No.: PCT/EP2004/012644	:	
Int. Filing Date: 09 November 2004	:	REQUEST
Priority Date: 22 November 2003	:	
Attorney's Docket No.: 2400.0410000	:	UNDER 37 CFR 1.42
For: 2-ETHYL-4,6-DIMETHYL-PHENYL-	:	
SUBSTITUTED SPIROCICLIC	:	
TETRAMIC ACID DERIVATIVES	:	

This decision responds to applicants' submission of a declaration of the inventors on 08 March 2007, containing an indication that joint inventor Christoph Erdelen is deceased. The declaration has been treated as a request for status under 37 CFR 1.42.

### **BACKGROUND**

On 09 November 2004, applicants filed international application PCT/EP2004/012644, claiming a priority date of 22 November 2003. The deadline for submitting the basic national fee to prevent abandonment of the international application as to the United States expired at midnight of 22 May 2006.

On 12 May 2006, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 08 January 2007, the Office mailed Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that additional claim fees, an oath or declaration of the inventors and the surcharge for late filing of the search fee, examination fee or oath or declaration were required.

On 08 March 2007, applicants filed a declaration of the inventors.

### **DISCUSSION**

Under 35 U.S.C. §117, legal representatives of deceased inventors may make application for patent upon compliance with the requirements and on the same terms and conditions applicable to the inventor. The "legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent." 37 C.F.R. 1.42.

The declaration provided does not state that the heir, Angelika Lubos-Erdelen is the sole heir of the deceased joint inventor, Christoph Erdelen. If a legal representative has been or is required to be appointed under applicable law, such person must sign the declaration and indicate the relationship, e.g., "legal representative of inventor Christoph Erdelen." Otherwise, all heirs of Christoph Erdelen must sign the declaration and indicate the relationship, e.g., "sole heir of Christoph Erdelen," or "legal representative of Christoph Erdelen." The indication that Angelika Lubos-Erdelen is an heir leaves open the possibility that there are other non-signing joint heirs. If Ms. Angelika Lubos-Erdelen is the sole heir and is signing the declaration as the legal representative of the estate of Christoph Erdelen, a statement to that effect will be sufficient.

### **CONCLUSION**

For the above reasons, the request for status under 37 C.F.R. 1.42 is **REFUSED**.

Applicants are required to submit an oath or declaration in compliance with 37 C.F.R. 1.497 and 1.42 within a time period of **TWO (2) MONTHS** from the mail date of this Decision. **THIS PERIOD FOR RESPONSE MAY BE EXTENDED UNDER 37 C.F.R. 1.136(a).** **FAILURE TO PROPERLY RESPOND WILL RESULT IN ABANDONMENT.** Any request for reconsideration of this decision should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42."

Any further correspondence with respect to this matter may be filed electronically via EFS-Web or if mailed, should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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